

No. 20-1010

IN THE
Supreme Court of the United States

DED RRANXBURGAJ,
Petitioner,
v.

DAVID P. PEKOSKE, ACTING SECRETARY OF
HOMELAND SECURITY, *et al*,
Respondents.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Sixth Circuit**

**BRIEF OF *AMICI CURIAE*
CHURCH WORLD SERVICE, ET AL,
IN SUPPORT OF PETITIONER**

LEON RODRIGUEZ
Counsel of Record
DAWN LURIE
BRET MARFUT
CHARLES GUZAK
SEYFARTH SHAW LLP
975 F Street, NW
Washington, D.C. 20004
(202) 463-2400
lerodriguez@seyfarth.com
Counsel for Amici Curiae

February 26, 2021

QUESTION PRESENTED

8 U.S.C. § 1252(g) provides that “no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.” The question presented, on which the courts of appeal are divided, is:

Do legal determinations antecedent to agencies’ discretionary decisions to commence proceedings, adjudicate cases, or execute removal orders “arise from” these decisions for purposes of 8 U.S.C. § 1252(g)?

TABLE OF CONTENTS

	Page
QUESTION PRESENTED.....	i
TABLE OF AUTHORITIES.....	iv
INTERESTS OF <i>AMICI CURIAE</i>	1
INTRODUCTION.....	1
ARGUMENT.....	3
I. SANCTUARY IS A SACRED DUTY FOR MANY FAITH TRADITIONS IN THE U.S.....	3
A. Sanctuary in Christianity	3
B. Sanctuary in Islam	10
C. Sanctuary in Judaism	15
II. 8 U.S.C. 1252(G) SHOULD NOT BE READ TO BAR A PERSON OPENLY SEEKING SANCTUARY FROM HAV- ING THEIR IMMIGRATION CASE HEARD BY THE COURTS	18
III. DENYING PEOPLE SEEKING OR LIVING IN SANCTUARY ACCESS TO THE COURTS EVISCERATES THE SACRED INSTITUTION OF SANCTUARY.....	22
CONCLUSION	23
APPENDIX	
List of Signatories for <i>Amicus</i> Brief.....	1a

TABLE OF AUTHORITIES

CASES	Page(s)
<i>Am. Baptist Churches v. Thornburgh</i> , 760 F. Supp. 796 (N.D. Cal. 1991).....	5
<i>Degen v. United States</i> , 517 U.S. 820 (1996).....	20, 21
<i>Nnebedum v. Gonzales</i> , 205 F. App'x 479 (8th Cir. 2006)	21
<i>Ortega-Rodriguez v. United States</i> , 507 U.S. 234 (1993).....	20
<i>Sun v. Mukasey</i> , 555 F.3d 802 (9th Cir. 2009).....	21
<i>United States v. Aguilar</i> , 883 F.2d 662 (9th Cir. 1989).....	6
<i>Ye v. Attorney Gen. of the U.S.</i> , 383 F. App'x 113 (3d Cir. 2010).....	21
<i>Zhou v. U.S. Attorney Gen.</i> , 290 F. App'x 278 (11th Cir. 2008)	21
STATUTES	
8 U.S.C. § 1252(g).....	19, 22
RULES	
Fed. R. Civ. P. 12(b)(6)	21
OTHER AUTHORITIES	
Abdullah Yusuf Ali, The Meaning of the Holy Qur'an (11th ed. 2004)	11
Qur'an 2:125.....	11

TABLE OF AUTHORITIES—Continued

	Page(s)
Qur'an 3:97.....	11
Qur'an 8:72.....	14
Qur'an 8:74.....	12
Qur'an 9:6.....	12
Qur'an 29:67.....	12
Qur'an 93:4.....	12
Ahmed Abou-El-Wafa, 19 Max Planck Yearbook of United Nations Law 307 (2015).....	10, 13, 14
Asma Afsarrudin, “ <i>Sunnah</i> ”, Encyclopedia Britannica (https://www.britannica.com/ topic/ Sunnah) (last visited Feb. 16, 2021)	12
Astri Suhrke, ‘ <i>Refugees and Asylum in the Muslim World</i> ’, in Robin Cohen, ed., The Cambridge Survey of World Migration (Cambridge University Press, Cambridge, 1995).....	13
Dora Ballew, <i>The Man Trying to Turn Mosques Into Places of Sanctuary</i> , Ozy (Feb. 6, 2017) (https://www.ozy.com/the- new-and-the-next/the-man-trying-to- turn-mosques-into-places-of-sanctuary/ 75559/).....	15

TABLE OF AUTHORITIES—Continued

	Page(s)
Doyle Murphy, <i>ICE Ordered Alex Garcia to Report for Deportation. He Took Sanctuary in a Maplewood Church Instead</i> , Riverfront Times (Nov. 22, 2017) (available at https://www.riverfronttimes.com/stlouis/alex-garcia-undocumented-sanctuary/Content?oid=11185820).....	23
Doyle Murphy, <i>ICE Won't Even Look at Alex Garcia's Latest Application</i> , Riverfront Times (Feb. 27, 2020) (available at https://www.riverfronttimes.com/newsblog/2020/02/27/ice-wont-even-look-at-alex-garcias-latest-application)..	23
Executive Order 13769, Protecting the Nation from Foreign Terrorist Entry into the United States, 82 Fed. Reg. 8977 (2017).....	14
Gregory Freeland, <i>Negotiating Place, Space and Borders: The New Sanctuary Movement</i> , Latino Studies Vol. 8(4), 485–508 (2010).....	7
H.R. 4437, 109th Cong. (2005-2006).....	6, 7
'Haramayn', in John L. Esposito, ed., <i>The Oxford Dictionary of Islam</i> (Oxford University Press, Oxford, 2003)	13
'Jāhilīyah', in John L. Esposito, ed., <i>The Oxford Encyclopedia of the Islamic World</i> (Oxford University Press, Oxford, 2009)..	10

TABLE OF AUTHORITIES—Continued

	Page(s)
John Burnett, <i>Sanctuary Immigrants Take Refuge in Texas Church, Watch Election Closely</i> , npr (Nov. 2, 2020) (https://www.npr.org/2020/11/02/930356424/sanctuary-immigrants-take-refuge-in-texas-church-watch-election-closely)	8-9
Khadija Elmadmad, <i>An Arab Convention on Forced Migration: Desireability and Possibilities</i> , 3 INT'L J. REFUGEE L. 461 (1991).....	10, 11, 13, 14
Kristina M. Campbell, <i>Humanitarian Aid is Never a Crime: The Politics of Immigrant Enforcement and the Provision of Sanctuary</i> , 63 Syracuse L. REV. 71 (2012)	5, 6, 7
Lane Van Ham, <i>Sanctuary Revisited: Central American Refugee Assistance in the History of Church-based Immigrant Advocacy</i> , POLITICAL THEOLOGY 10:4, 621–45 (2009).....	passim
Meagan Flynn, <i>ICE arrested an undocumented immigrant on church grounds. They lied to coax him out, family and attorney say.</i> , Wash. Post (Sept. 17, 2020) (available at https://www.washingtonpost.com/local/social-issues/glenmont-church-ice-deportation/2020/09/17/e57febd8-f855-11ea-be57-d00bb9bc632d_story.html)	8

TABLE OF AUTHORITIES—Continued

	Page(s)
Meagan Flynn, <i>Singing ‘Amazing Grace,’ a church surrounded an ICE van to stop an arrest. 27 were jailed.</i> , Wash. Post (Nov. 26, 2018).....	9
Mikdash: A Jewish Guide to the New Sanctuary Movement (2019) (available at https://www.truah.org/resources/mikdash-a-jewish-guide-to-the-new-sanctuary-movement/).....	15, 16, 17
National Sanctuary Collective, Meet Our Sanctuary Families, (http://thesanctuarycollective.org/)(last visited Feb. 24, 2021)	8
Patrick Kingsley, <i>96 Days Later, Nonstop Church Service to Protect Refugees Finally Ends</i> , N.Y. Times (Jan. 30, 2019) (available at https://www.nytimes.com/2019/01/30/world/europe/netherlands-church-vigil-refugees.html)	9
Samuel Cheung, <i>Religious Foundations of Asylum and the Challenges of Contemporary Practice</i> , 6 HUM. RTS. 14 (2011).....	13
<i>Sanctuary in the Age of Trump: The rise of the movement a year into the Trump administration</i> (January 2018) (available at https://www.sanctuarynotdeportation.org/uploads/7/6/9/1/76912017/sanctuary_in_the_age_of_trump_january_2018.pdf)	7-8

TABLE OF AUTHORITIES—Continued

	Page(s)
Sigal Samuel, <i>Mosques Want to Offer Sanctuary, But Will Anyone Accept?</i> , <i>The Atlantic</i> (Feb. 10, 2017)	15
The Bible, RSVCE:	
<i>Acts</i> 10:28	4
<i>Deuteronomy</i> 23:16–17.....	17
<i>Exodus</i> 23:9	16
<i>Galatians</i> 3:28.....	4
<i>Joshua</i> 2:3-7	17
<i>Leviticus</i> 19:33–34	4, 5, 16
<i>Luke</i> 10:25–37	3, 4, 9
<i>Matthew</i> 25:31–46.....	4, 5
U.S. Immigration and Customs Enforcement, “ <i>FAQ’s: Sensitive Locations and Courthouse Arrests</i> ” (updated Feb. 2, 2021) (https://www.ice.gov/about-ice/ero/sensitive-loc).....	18, 19
U.S. Immigration and Customs Enforcement, <i>ICE Guidance on COVID-19</i> (April 17, 2020), (available at www.ice.gov/coronavirus).....	23

INTERESTS OF *AMICI CURIAE*¹

This brief is submitted on behalf of Church World Service, et al (the “Co-Amici”) in support of Petitioner. Co-Amici are sixty organizations, representing multiple faith traditions, whose beliefs call them to provide sanctuary to individuals facing deportation. These organizations hold deep values including family unity, compassion, mercy and hospitality, and find cause within their religious practices to honor the humanity and dignity of all, including through providing sanctuary to those in need. They deeply value the tradition of welcoming immigrants, no matter their status, as an expression of religious freedom. If the Circuit Court’s decision stands, a sacred spiritual practice of those faiths will be significantly degraded in a manner that the law simply does not require. In this respect, the Co-Amici have a strong interest in this Court granting Certiorari and reviewing the underlying Sixth Circuit decision.

INTRODUCTION

This brief is filed in support of the Petition for Certiorari filed on behalf of Ded Rranxburgaj in the above-captioned case. As described in the Petition, Mr. Rranxburgaj, an Albanian national subject to a final order of removal, moved into sanctuary in a

¹ Pursuant to Supreme Court Rule 37.6, *amici curiae* certify that no counsel for any party authored this brief in whole or in part, and that no person other than *amici*, their members, or their counsel made any monetary contribution intended to fund the preparation or submission of this brief. Pursuant to Supreme Court Rule 37.3, *amici* states that all counsel of record for all parties have consented to the filing of this brief.

Detroit church in order to care for his wife who suffers from advancing multiple sclerosis.

The term “sanctuary” in this brief refers to the act of taking refuge while seeking a stay of removal and/or other form of temporary relief in order to stay united with one’s family or community rather than separated through deportation. Sanctuary is an ancient religious practice that recognizes that laws are often administered in unjust ways, especially for marginalized communities, and that further opportunity to defend one’s case serves the greater common good. In the modern version of sanctuary, particularly as it relates to the United States’ immigration laws, no one is concealed or hidden; sanctuary seekers tell their story publicly in the media and openly seek reprieve from family separation. Sanctuary congregations practice a spectrum of solidarity activities that are considered part of their ministry, faith tradition and religious freedoms. These include, but are not limited to, providing basic needs such as food, clothing, and assistance for medical needs; prayer, religious services, and vigils that mobilize community support; pastoral care and assistance with professional mental health support; hospitality and welcoming all people to their faith community regardless of country of origin or documentation status. All of these acts are supported by countless Jewish, Christian, and Muslim scriptures found in the Torah, the Bible and the Qur’an, among other sacred texts by many faith traditions.

Failure to grant certiorari in this case, which would allow the underlying Sixth Circuit decision to stand, would degrade and irreparably diminish the institu-

tion of sanctuary, adversely affecting all of the Co-Amici as well as other faith-based organizations. Thus, Co-Amici urge the Court to grant Mr. Rranxburgaj's Petition for Certiorari.

ARGUMENT

I. SANCTUARY IS A SACRED DUTY FOR MANY FAITH TRADITIONS IN THE U.S.

A. Sanctuary in Christianity

Asked by a lawyer about the details of loving one's neighbor in Luke Chapter 10, Jesus delivers one of his most recognizable parables:

But he [a lawyer questioning Jesus], desiring to justify himself, said to Jesus, "And who is my neighbor?" Jesus replied, "A man was going down from Jerusalem to Jericho, and he fell among robbers, who stripped him and beat him, and departed, leaving him half dead. Now by chance a priest was going down the road; and when he saw him he passed by on the other side. So likewise a Levite, when he came to the place and saw him, passed by on the other side. But a Samaritan, as he journeyed, came to where he was; and when he saw him, he had compassion, and went to him and bound up his wounds, pouring on oil and wine; then he set him on his own beast and brought him to an inn, and took care of him. And the next day he took out two denarii and gave them to the innkeeper, saying, 'Take care of him; and whatever more you spend, I will repay you when I come back.' Which of these three, do you think, proved neighbor to the man who fell among the robbers?" He said, "The one who showed mercy on him."

And Jesus said to him, “Go and do likewise.”
*Luke 10:25–37.*²

This parable, the Parable of the Good Samaritan, reflects themes about how Christians ought to treat others (particularly the disenfranchised) that appear throughout the Bible. Scripture makes clear that the duty to “love your neighbor” reaches across ethnic and social lines—even to Samaritans. *Galatians* 3:28 (“There is neither Jew nor Greek, there is neither slave nor free, there is neither male nor female; for you are all one in Christ Jesus.”); *Acts* 10:28 (“And [Peter] said to them, ‘You yourselves know how unlawful it is for a Jew to associate with or to visit any one of another nation; but God has shown me that I should not call any man common or unclean.’”). That Christians ought to love the alien. *Leviticus* 19:33–34 (“When a stranger sojourns with you in your land, you shall not do him wrong. 34 The stranger who sojourns with you shall be to you as the native among you, and you shall love him as yourself; for you were strangers in the land of Egypt: I am the Lord your God.”) And that by feeding the hungry, serving the thirsty, welcoming the stranger, clothing the naked, looking after the sick and visiting the imprisoned, Christians do the same to Christ. *Matthew* 25:31–46.

In the eyes of many Christians, these and other similar verses compel them to offer shelter to, demonstrate hospitality and welcome and protect undocumented immigrants facing unjust deportation. Lane Van Ham, *Sanctuary Revisited: Central American Refugee Assistance in the History of Church-based Immigrant Advocacy*, *POLITICAL THEOLOGY* 10:4, 621–

² All Bible citations in this section are to the Revised Standard Version Catholic Edition.

45, 623 (2009) (“Over the last 70 years, church-based immigrant advocates (CBIAs) have regularly pled their case on biblical grounds, quoting, in particular, Matt. 25:35–40 and Lev. 19:33–34.”). The stories of Christians rendering humanitarian aid to undocumented immigrants, including by physically offering temporary housing in churches, *See* Kristina M. Campbell, *Humanitarian Aid is Never a Crime: The Politics of Immigrant Enforcement and the Provision of Sanctuary*, 63 Syracuse L. REV. 71, 115 (2012) (describing other forms of humanitarian aid that can constitute “sanctuary”), are well documented in a significant body of literature on what has become known as the sanctuary movement.

In the 1980’s, civil wars in Central America sent countless refugees fleeing to the United States seeking political asylum. Many of their asylum claims were summarily rejected. At the time, the United States categorized refugees from El Salvador, Guatemala, and Nicaragua as “economic” refugees that were ineligible for political asylum as a matter of law. Campbell, *supra* at 101 (citing *Am. Baptist Churches v. Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991)). For many, that decision was effectively a death sentence. *Id.*

The facial injustice of this policy, and the often horrifying consequences for those pursuing justice, *see* Van Ham, *supra* at 632, sparked what became known as the Sanctuary Movement. *Id.* It started when Jim Corbett, a Quaker from a goat herding cooperative near Tucson, Arizona, learned that Border Patrol was deporting Salvadorans without hearings and began sheltering refugees at his cooperative. *Id.* He convinced refugee advocates in Tucson to do the same, and the movement grew into what the Ninth Circuit

would later call “a modern-day underground railroad,” *United States v. Aguilar*, 883 F.2d 662, 666 (9th Cir. 1989)—a transnational network of churches that transported and sheltered Central American refugees throughout the United States. Van Ham, *supra* at 633. Unlike the underground railroad, however, the Sanctuary Movement operated openly. *See Aguilar*, 883 F.2d at 668 (explaining the publicity surrounding the Sanctuary Movement and the stated willingness of live into their religious values and practices even if at odds with immigration laws). Indeed, leaders in the movement sent a letter to then Attorney General William French Smith, stating the movement’s intention to violate immigration law and explaining, among other things, “that participants had a ‘God-given right’ to aid those in need and that doing so was ‘obedience to God.’” Van Ham, *supra* at 633.

Though several people at the heart of the Sanctuary Movement were prosecuted and convicted, it did little to quell the movement. *See Aguilar*, 883 F.2d at 666 (9th Cir. 1989); *see also* Campbell, *supra* at 101–02 & n. 184–86 (describing the prosecutions of individuals affiliated with the Sanctuary Movement). Indeed, the number of religious institutions affiliated with the movement doubled in the wake of those convictions “and the network continued to function across the country until the end of the decade, when a decline in refugee arrivals and changes in U.S. asylum law brought its reason for being to a close.” Van Ham, *supra* at 622.

Increased immigration law enforcement in the wake of the September 11, 2001 terrorist attacks reignited interest in the concept of sanctuary and fueled a resurgence of the Sanctuary movement. The flashpoint for this resurgence was House Bill H.R.

4437, 109th Cong. (2005-2006) a bill that would have criminalized virtually any provision of aid to persons not lawfully present in the United States. Van Ham, *supra* at 639; Campbell, *supra* at 103. The bill drew widespread condemnation from Christians. Cardinal Roger Mahoney of the Archdiocese of Los Angeles, a vocal opponent of the bill, declared that he would direct his priests to disobey it if it were signed into law, explaining that “[d]enying aid to a fellow human being violates a law with a higher authority than Congress—the law of God.” Van Ham, *supra* at 639.

Though H.R. 4437 died in the Senate, the Sanctuary Movement survived. Christian churches and organizations have continued to offer sanctuary to immigrants facing the threat of deportation when existing laws fail to do so, and, instead, sustain the devastating family separation and trauma of deportation. For an analysis of the growth of the Sanctuary Movement that followed the introduction of H.R. 4437, including stories of those to whom its members have provided sanctuary, see Gregory Freeland, *Negotiating Place, Space and Borders: The New Sanctuary Movement*, *Latino Studies* Vol. 8(4), 485–508 (2010).

The movement gained steam in the wake of the 2016 election. Heeding the warnings of the incoming Trump administration, more churches lined up to join the ranks of those already offering sanctuary to immigrants. The number of congregations affiliated with the movement spiked, climbing from 400 to 800 in the months following the 2016 election. By 2018, the number was over 1,000. *Sanctuary in the Age of Trump: The rise of the movement a year into the Trump administration* (January 2018) (available at <https://www.sanctuarynotdeportation.org/uploads/7/6>

/9/1/76912017/sanctuary_in_the_age_of_trump_january_2018.pdf).

Examples of Christians protecting immigrants from deportation have been well documented in recent years. Currently, over 40 people are living in public sanctuary.³ Last year, Glenmont United Methodist Church in Maryland made national news when ICE agents lured an Indonesian asylum seeker from his home on church grounds, ostensibly to check a component on his ankle monitor, then arrested him—a move that drew widespread condemnation from religious leaders. Meagan Flynn, *ICE arrested an undocumented immigrant on church grounds. They lied to coax him out, family and attorney say.*, Wash. Post (Sept. 17, 2020), https://www.washingtonpost.com/local/social-issues/glenmont-church-ice-deportation/2020/09/17/e57febd8-f855-11ea-be57-d00bb9bc632d_story.html. A Presbyterian church outside Austin, Texas has publicly sheltered a Guatemalan family, 32 year-old Hilda Ramirez and her 14-year old son Ivan, for five years. John Burnett, *Sanctuary Immigrants Take Refuge in Texas Church, Watch Election Closely*, npr

³ The National Sanctuary Collective, Meet Our Sanctuary Families, formed in 2017, has supported over a dozen individuals and families living in sanctuary including: Abbie Arevalo Herrera (Richmond, Virginia), Alirio Gámez (Austin, Texas), Carmela Apolonio Hernández (Philadelphia, Pennsylvania), Edith Espinal Moreno (Columbus, Ohio), Firelly Ríos (Amesbury, Massachusetts), Hilda Ramírez Méndez and Iván (Austin, Texas), Irida Kakhtiranova (Northampton, Massachusetts), Lucio Pérez Ortiz (Amherst, Massachusetts), María Chavalán Sut (Charlottesville, Virginia), María Merida (Bedford, Massachusetts), Miriam Vargas Rodríguez (Columbus, Ohio), Rosa Gutiérrez López (Bethesda, Maryland), Rosa Sabido (Mancos, Colorado), Vicky Chávez (Salt Lake City, Utah), Alex Garcia (St. Louis, Missouri).. For details, please visit <http://thesanctuarycollective.org/> (last visited Feb. 24, 2021).

(Nov. 2, 2020) (available at <https://www.npr.org/2020/11/02/930356424/sanctuary-immigrants-take-refuge-in-texas-church-watch-election-closely>). And in 2018, nearly 30 members of the congregation of CityWell United Methodist Church in North Carolina were arrested for obstructing the arrest of Samuel Oliver-Bruno, an undocumented immigrant in sanctuary at the church that the congregation had shuttled to an appointment with USCIS. Meagan Flynn, *Singing ‘Amazing Grace,’ a church surrounded an ICE van to stop an arrest. 27 were jailed.*, Wash. Post (Nov. 26, 2018). “[W]e don’t really believe that sanctuary is just a building,” the church’s pastor Cleve May said. “The sanctuary went with Samuel to this office.” *Id.*

Of course, these stories, even the Sanctuary and New Sanctuary movements as a whole, are not exhaustive. Christians in the United States offered sanctuary to immigrants long before 1980. *See, e.g.*, Van Ham, *supra* at 627–31 (2009) (describing efforts by Christians to support people displaced in the wake of World War II). Nor is the concept of sanctuary uniquely American. Two years ago, a Dutch church famously held a 96-day vigil to protect an Armenian family from deportation, taking advantage of a law that forbids Dutch police from interrupting church services. Patrick Kingsley, *96 Days Later, Nonstop Church Service to Protect Refugees Finally Ends*, N.Y. Times (Jan. 30, 2019) (available at <https://www.nytimes.com/2019/01/30/world/europe/netherlands-church-vigil-refugees.html>). But they do make clear that many Christians have felt that it was their duty to welcome and protect undocumented immigrants facing deportation. And recent trends confirm that Christians, like the lawyer in Luke Chapter 10, still feel called to “go and do likewise.” *Luke* 10:37.

B. Sanctuary in Islam

As in Christianity, the concept of sanctuary has a rich and storied history in Islam. It is codified and addressed by the text of the Qur'an, it has been applied throughout Islamic history, and it is rooted in the traditions of pre-Islamic Arabia. The Arabic words generally used to describe the concept of sanctuary are *aman* (security) and *istijara* (refuge); the same words appear in the asylum context. See Ahmed Abou-El-Wafa, 19 Max Planck Yearbook of United Nations Law 307 (2015). In the pre-Islamic period known as the *jahiliyya*, sacred places in the Arab world granted sanctuary to those who sought refuge. Khadija Elmadmad, *An Arab Convention on Forced Migration: Desireability and Possibilities*, 3 INT'L J. REFUGEE L. 461, 469 (1991). *Jahiliyya* is usually translated as "era of ignorance; that is, ignorance of Islam. 'Jāhiliyyah' in John L. Esposito, ed., The Oxford Encyclopedia of the Islamic World (Oxford University Press, Oxford, 2009). According to the Qur'an, the Kaaba in Mecca was built by the Prophet Abraham, who made it a place of tolerance and refuge, suitable for those seeking sanctuary. Elmadmad, *supra*, at 467. In the deserts of Arabia, Arab nomads used to have a tent serving as a sanctuary providing shelter and safety for some customary period of time (usually a few days). Law Professor Khadija Elmadmad describes the pre-Islamic tradition of sanctuary as follows.

According to tribal laws, some tents or places were set aside as perpetual or permanent sanctuaries. Traditions of Arab hospitality in the *Jahilya* dictated respect for and protection of the guest, who should not be handed over to an adversary, regardless of the cost to

the host. Conflicts often arose between tribes on account of their refusal to extradite those under sanctuary. A stranger was almost sacred in Arabia, especially if he came to seek help against injustice and oppression or the hard nature of the desert. Even an enemy was granted protection and hospitality. From the custom of welcoming guests derived the obligation for all tribes to grant asylum and protection to any person who asked for it, whatever the reasons of his flight. Sharing 'bread and salt' became a sort of covenant between the refugee and the family who offered him food. By this contract, all members of the family were obliged to protect and defend him. *Id.*

With the advent of Islam, these existing traditions were strengthened and codified from humanitarian and tribal principles to specific legal requirements written in the Qur'an. In fact, the importance of sanctuary is acknowledged many times in the Qur'an. Below are some of the most commonly cited verses.

Remember we made the house a place of assembly for men and a place of safety; And take ye the station of Abraham as a place of prayer; and We covenanted with Abraham, and Ismai'l that they should sanctify my house for those who compass it round, or use it as a retreat, or bow, or prostrate themselves (therein in prayer). Qur'an 2:125.⁴

The station of Abraham; whoever enters it attains security. Qur'an 3:97.

⁴ All citations to the Qur'an are to The Meaning of the Holy Qur'an by Abdullah Yusuf Ali (11th ed. 2004).

Those who believe, and adopt exile, and fight for the faith, in the cause of Allah, as well as those who give (them) asylum and aid--these are (all) in very truth the Believers: for them is the forgiveness of sins and a provision most generous. Qur'an 8:74.

If one amongst the Pagans ask thee for asylum, grant it to him. So that he may hear the Word of Allah: and then escort him to where he can be secure. Qur'an 9:6.

Do they not then see that We have made a Sanctuary secure, and that men are being snatched away from all around them. Qur'an 29:67.

And verily the hereafter will be better for thee than the present. And soon will thy Guardian-Lord give thee (that wherewith) thou shall be well-pleased. Did He not find thee an orphan and give thee shelter (and care)? And He found thee wandering, and He gave thee guidance. And He found thee in need, and made thee independent. Therefore treat not the orphan with harshness, nor repulse the petition (unheard). Qur'an 93:4.

The obligation of Muslims to provide sanctuary is thus formalized in the Qur'an and was further enriched and refined by the Sunna, which is a source of Islamic law that consists of the practices and traditions of the Prophet Muhammad, whose example Muslims are to follow. Asma Afsarrudin, "*Sunnah*" in Encyclopedia Britannica (<https://www.britannica.com/topic/Sunnah>) (last visited Feb. 16, 2021). Sanctuary became a major institution in Islamic societies early in Islam, under which many Jews and Christians were

able to flee persecution. Astri Suhrke, *Refugees and Asylum in the Muslim World*, in Robin Cohen, ed., *The Cambridge Survey of World Migration* (Cambridge University Press, Cambridge, 1995). The Sunna asserts the need to respect any person seeking refuge, even if that person is an opponent in war. See Abou-El-Wafa, *supra*, at 88.

Two major events that shaped early Islam were directly linked to the concept of sanctuary. The first was the Prophet's migration to Abyssinia in 615, where he advised his first converts faced with persecution to leave for the land of the Abyssinians where they were received and found protection under Negus, the King of Abyssinia. Samuel Cheung, *Religious Foundations of Asylum and the Challenges of Contemporary Practice*, 6 HUM. RTS. [14], 18 (2011). The second event was emigration of the Prophet Mohammed from his home city of Mecca due to the hostility of the locals to take refuge in Medina (formerly known as Yathrib), where he was received and granted sanctuary. *Id.* That event, which took place in the year 622, marks the beginning of the Islamic calendar. Elmadmad, *supra*, at 469. Those two cities: Mecca, Muhammad's home to which he later returned, and Medina became known as al-haramayn, which literally translates to the "two sanctuaries" in English. *'Haramayn'*, in John L. Esposito, ed., *The Oxford Dictionary of Islam* (Oxford University Press, Oxford, 2003). In this way, the very origins of Islam are rooted in the concept of sanctuary.

In practice, the logistics of sanctuary in Islamic law are simple. The granting of sanctuary can take any form and can be made in any language; it can be granted even by pronouncing the sentence: 'do not be afraid' or can be expressed even by a gesture. No

person to whom sanctuary has been granted can be attacked, and his or her life, property, honor and freedom of consciousness should be safeguarded and protected. A person who has been granted sanctuary is not obligated to become a Muslim or to observe religious rites and festivities. Elmadmad, *supra*, at 472.

The obvious form of sanctuary in Islam is the type afforded to those seeking sanctuary in a mosque, which is of course protected. However, sanctuary in Islamic law is not purely confined to sacred places; it can also be granted by any person without any discrimination between men and women, Muslims or non-Muslims, free persons or slaves, poor or rich, members of the community or outsiders. Elmadmad, *supra*, at 470; *see also* Abou-El-Wafa, *supra* at 45. This is reflected in the following verse from the Qur'an:

Those who believed and adopted exile, and fought for the Faith, with their property and their persons, in the cause of Allah, as well as those who gave (them) asylum and aid—these are (all) friends and protectors, one of another as to those who believed but came not into exile; ye owe no duty of protection to them until they come into exile. Qur'an 8:72.

In addition to its historical significance, the concept of sanctuary remains relevant in the Islamic community today. Upon implementation of former President Donald Trump's Executive Order 13769, titled Protecting the Nation from Foreign Terrorist Entry into the United States (82 FR 8977 (2017)), some American mosques publicly announced that those who might be affected by the ban, who could be facing deportation, or who felt persecuted for their faith, were wel-

come to seek sanctuary within their confines. For example, a Dallas-based Imam named Omar Suleiman announced his hope that mosques would welcome immigrants and refugees of all faith into their places of worship to provide temporary living spaces, food, and support. Dora Ballew, *The Man Trying to Turn Mosques Into Places of Sanctuary*, Ozy (Feb. 6, 2017) <https://www.ozy.com/the-new-and-the-next/the-man-trying-to-turn-mosques-into-places-of-sanctuary/75559/> (last accessed Feb. 17, 2021). He added that “mosques’ offers of sanctuary need not be purely symbolic when it comes to non-Muslims. ‘I don’t think many people would take us up on the offer, but we need to be equipped if they do.’” Sigal Samuel, *Mosques Want to Offer Sanctuary, But Will Anyone Accept?*, The Atlantic (Feb. 10, 2017). The Islamic doctrine of sanctuary is extremely important and deeply rooted in its history and scripture, and it continues to be relevant to the Muslim community at large.

C. Sanctuary in Judaism

In Judaism, sanctuary is described generally in three ways: welcoming the stranger, aiding the persecuted, and sheltering the oppressed. See Mikdash: A Jewish Guide to the New Sanctuary Movement (Expanded Edition) at 22–24 (2019) (available at <https://www.truah.org/resources/mikdash-a-jewish-guide-to-the-new-sanctuary-movement/>) (last visited Feb. 15, 2021). Possibly the most common understanding of sanctuary is as welcoming the stranger. In Judaism specifically, this rendering finds significance in the plight of the Jewish people during their journey from Egypt to the Promised Land. The Israelites, forced out of their homeland, quickly found themselves as strangers in this new land. Eventually, as their

tradition outlines, Moses, under the direction of God, led his People back to Israel as promised.

Though the Israelites eventually returned home, they did not fail to remember their own struggles as the stranger. In Leviticus, Chapter 19, the Torah reads, “Rather, treat the foreigner staying with you like the native-born among you — you are to love him as yourself, for you were foreigners in the land of Egypt.” *Leviticus* 19:34. This understanding of sanctuary as expressed in this verse, goes beyond the idea of welcoming the stranger and ventures into the belief that people should make the stranger a “native-born” of their land.

The second concept of sanctuary, *aiding the persecuted*, also relates to the same journey to the Promised Land. In Egypt, the Jewish people were heavily persecuted and forced into slavery by the Pharaoh. Here too, the Jewish people did not forget the suffering endured under slavery, as the Torah reads, “You are not to oppress a foreigner, for you know how a foreigner feels, since you were foreigners in the land of Egypt.” *Exodus* 23:9.

This interpretation of sanctuary may hold the most contemporary significance, as the Holocaust occurred not even a century ago. In the 1930’s and 1940’s, the Nazi regime persecuted, imprisoned, and murdered millions of Jews due to their anti-Semitic beliefs. *See Mikdash, supra*, at 26 (2019). European Jews found themselves in a situation where they had to decide between staying and hiding or fleeing. *See id.* In either circumstance, often their only chance at survival was the willingness of others to provide sanctuary. Whether this sanctuary came in the form of a hidden attic in Warsaw or as a refugee coming onto

the shore of the United States, sanctuary offered survival to hundreds of thousands of Jews. *See id.*

The final interpretation, *sheltering the oppressed*, arises from the Old Testament commandment to protect a fleeing slave from his master. *Deuteronomy* 23:16–17, the Torah reads:

If a slave has escaped from his/her master and taken refuge with you, you are not to hand him/her back to his/her master. Allow him/her to stay with you, in whichever place suits him/her best among your settlements; do not mistreat him/her.

Here, the Torah holds that a fleeing slave must be welcomed, housed and comforted notwithstanding the “property right” that a slave’s master may have held. This central concept should logically extend to an otherwise peaceful person who is seeking refuge for the sole purpose of securing a fair hearing of their case.

This notion of protecting the fleeing slave not only appears in the Torah in the hypothetical sense, but in many stories, characters who are believed to have committed certain violations or are enemies of the state are granted sanctuary and refuge. In *Joshua*, Chapter 2, for example, Rahab grants sanctuary in her home to two Israelites spies fleeing the king of Jericho. *Joshua* 2:3-7.

It appears that both in the verse and in the story, Judaism defines sanctuary in this sense as temporary reprieve to avoid immediate condemnation, as the only method to exonerate oneself would be to be able to provide a rebuttal and evidence to the contrary. Together, these three renderings of sanctuary elicit a sense of sacredness of the concept within the Jewish faith.

II. 8 U.S.C. 1252(G) SHOULD NOT BE READ TO BAR A PERSON OPENLY SEEKING SANCTUARY FROM HAVING THEIR IMMIGRATION CASE HEARD BY THE COURTS.

As described above, the concept of sanctuary has deep textual and historic roots in Christianity, Islam and Judaism. For many adherents of those faiths, the offering of sanctuary is an important exercise of their faith that should not be infringed. As such, legal interpretations by government authorities that curtail access to sanctuary should be reviewed with a probing eye by the courts and interpreted so as to avoid inhibiting the faithful from the free exercise of their beliefs.

Respondents themselves have recognized that the sanctity of houses of worship renders them locations largely to be avoided for purposes of immigration enforcement. Specifically, “Frequently Asked Questions” posted on the agency website of Immigration and Customs Enforcement state as follows:

Pursuant to ICE policy, enforcement actions are not to occur or be focused on sensitive locations such as schools, places of worship, unless:

1. exigent circumstances exist;
2. other law enforcement actions have led officers to a sensitive location, or
3. prior approval is obtained from a designated supervisory official.

The policy is intended to guide ICE officers’ and agents’ actions when enforcing federal law at or focused on sensitive locations, to

enhance public understanding and trust, and to ensure that people seeking to participate in activities or utilize services provided at any sensitive location are free to do so, without fear or hesitation. Immigration and Customs Enforcement,

U.S. Immigration and Customs Enforcement, “*FAQ’s: Sensitive Locations and Courthouse Arrests*” (updated Feb. 2, 2021) <https://www.ice.gov/about-ice/ero/sensitive-loc> (last visited Feb. 15, 2020).

This policy’s mandate that an individual should be free to access the services of houses of worship or other sensitive locations “without fear or hesitation” goes to the heart of the question facing the Court here. A sanctuary seeker has neither disappeared, left the jurisdiction, nor used force to avoid ICE’s jurisdiction. Instead, a sanctuary seeker lives under the protection of ancient mandates common to many faith traditions and does so with full knowledge of governmental authorities. The courts should no more deny an individual facing the non-criminal process of deportation a hearing under these circumstances than allow armed agents break into a sacred space to apprehend that same individual.

The Sixth Circuit below has unnecessarily interpreted 8 U.S.C. § 1252(g) in a manner that degrades the institution of sanctuary as practiced by believers in many faith traditions in the U.S. That is because the court misinterpreted § 1252(g) to bar access to the courts in cases like Mr. Rranzburgaj’s. The question in this case is not whether the Court can review the decision by the Department of Homeland Security (DHS) to execute the final order of removal lodged against Mr. Rranzburgaj, but, rather, whether the Court can review the underlying determination,

specifically DHS's characterization of Mr. Rranxburgaj as a fugitive.

Respondents erroneously cite to the fugitive disentitlement doctrine as justification for dismissal of this case, which allows for dismissal of proceedings where the person seeking relief is a fugitive. But the Court has held that the fugitive disentitlement doctrine should be employed only when the alien has "fled the jurisdiction". *Ortega-Rodriguez v. United States*, 507 U.S. 234, 242 (1993). Here, Mr. Rranxburgaj has not fled the jurisdiction and Respondents were timely notified of his address in a sanctuary church. Thus, the fugitive disentitlement doctrine does not apply here, and Mr. Rranxburgaj should be entitled to challenge his erroneous designation as a fugitive.

In *Degen v. United States*, the Court addressed the fugitive disentitlement doctrine in a civil context. 517 U.S. 820 (1996). The appellant was involved in two proceedings; he fled abroad after both a criminal indictment and a civil forfeiture action had been lodged against him. Although he showed no interest in returning to face the criminal charges, he filed an answer in the civil case, but the district court (affirmed by the circuit court) granted the government summary judgment because of his fugitive status on the criminal side. The Court first noted that its precedents recognized three reasons for the fugitive disentitlement doctrine: (1) assuring the enforceability of a decision against the fugitive; (2) not allowing a fugitive to utilize the resources of the court when he has flouted the judicial system; and (3) discouraging escape and encouraging voluntary surrender. *Id.* at 824. It also observed that disentitlement might be "necessary to prevent actual prejudice to the Government from a fugitive's extended absence. . . ." *Id.* at

825. But the Court found that the fugitive disentitlement doctrine was a “harsh” and “severe” doctrine that metes out “rough justice” to those to whom it is applied. Thus, the Court deemed dismissal in that instance “too blunt an instrument,” eroding rather than enhancing respect for the judicial system. *Id.* at 827–29.

To date, seven federal courts of appeals have opined on the question of whether the fugitive disentitlement doctrine can be used to disentitle a non-citizen from seeking immigration relief when his whereabouts are known to authorities. The majority say no. *See Ye v. Attorney Gen. of the U.S.*, 383 F. App’x 113, 115–16 (3d Cir. 2010); *Sun v. Mukasey*, 555 F.3d 802, 805 (9th Cir. 2009); *Zhou v. U.S. Attorney Gen.*, 290 F. App’x 278, 281 (11th Cir. 2008); *Nnebedum v. Gonzales*, 205 F. App’x 479, 480–81 (8th Cir. 2006). Representative of that majority, the Ninth Circuit held that the proper inquiry was whether the non-citizen had “fled custody *and cannot be located*” by the government. *Sun*, 555 F.3d at 805 (emphasis added). Because petitioner’s “whereabouts [in that case were] known to her counsel, DHS, and th[e] court” throughout the pendency of her court proceeding, she was not considered a fugitive and the fugitive disentitlement doctrine was deemed inapplicable. *Id.* Mr. Rranxburgaj’s circumstances are directly analogous to those in *Sun*.

The Circuit Court opinions, as well as this briefing and the briefing below, have fully addressed the arguments on both sides of the aforementioned question. This Court is thus well positioned to decide the circuit split, which forms the basis for the government’s 12(b)(6) motion. Here, as in *Degen*, Mr. Rranxburgaj submits that the fugitive disentitlement doctrine should not apply and should not have ren-

dered Mr. Rranxburgaj's application for a stay of removal moot. Mr. Rranxburgaj is entitled to a determination on the merits regarding whether he is a fugitive. The Sixth Circuit's erroneous interpretation of § 1252(g) is unjustly preventing him from seeking the relief to which he is entitled.

III. DENYING PEOPLE SEEKING OR LIVING IN SANCTUARY ACCESS TO THE COURTS EVISCERATES THE SACRED INSTITUTION OF SANCTUARY.

Should the decision of the Circuit Court stand, the institution of sanctuary will find itself significantly degraded. Churches, mosques and synagogues, recognizing that providing sanctuary will limit that person's access to justice may be reluctant to offer or may even refuse to offer refuge to those in their time of direst need. If that happens, those religious institutions will be unable to honor the deeply rooted practices and traditions of their faiths, infringing on their right of free exercise of religion. In seeking and living in sanctuary, those facing removal from the U.S. choose to face authority openly, honestly and peacefully. The impact of denying access to the courts to those seeking or living in sanctuary is to drive them in to more evasive, desperate and dangerous paths. This surely could not have been the intent of 8 U.S.C. § 1252(g).

The impacts of this designation extend beyond the circumstance of Mr. Rranxburgaj, as several other individuals living in sanctuary have been presented with the same arguments by local ICE agents; these matters have not been litigated in court to date. For example, Rene Alexander Garcia Maldonado (a# 078-176-440) has been living in sanctuary at Christ Church United Church of Christ in Maplewood (St.

Louis), Missouri, since September 21, 2017. On three separate occasions, ICE has told counsel for Mr. Garcia that they have designated him a fugitive and therefore, will not review the requests to stay his deportation.⁵ In fact, on these three occasions, ICE officers have denied counsel the ability to file the request for a stay entirely.

CONCLUSION

For the reasons stated above, Co-Amici submit that the Petition for Certiorari should be granted.

Respectfully submitted,

LEON RODRIGUEZ

Counsel of Record

DAWN LURIE

BRET MARFUT

CHARLES GUZAK

SEYFARTH SHAW LLP

975 F Street, NW

Washington, D.C. 20004

(202) 463-2400

lerodriguez@seyfarth.com

Counsel for Amici Curiae

February 26, 2021

⁵ Attempts to file were made on: September 21, 2017; February 27, 2020; and via U.S. Postal Service on April 24, 2020 per COVID Guidelines issued by ICE specific to stays of removal dated April 17, 2020 (available online: www.ice.gov/coronavirus). For details regarding the attempted filings, see for example: Doyle Murphy “*ICE Ordered Alex Garcia to Report for Deportation. He Took Sanctuary in a Maplewood Church Instead* (Nov. 22, 2017),” Riverfront Times (available at <https://www.riverfronttimes.com/newsblog/2020/02/27/ice-wont-even-look-at-alex-garcia-s-latest-application>). Doyle Murphy “*ICE Won’t Even Look at Alex Garcia’s Latest Application*,” Riverfront Times (Feb. 27, 2020) (available at <https://www.riverfronttimes.com/newsblog/2020/02/27/ice-wont-even-look-at-alex-garcias-latest-application>).

APPENDIX

APPENDIX

List of Signatories for *Amicus* Brief

Plymouth Welcoming Migrants Committee
Des Moines, IA

Congregation Shaare Emeth
St. Louis, MO

El Paso Monthly Meeting of the Religious Society of
Friends (Quakers)
El Paso, TX

Leadership Conference of Women Religious
Silver Spring, MD

Plymouth Congregational United Church of Christ
Fort Collins, CO

Congregation of Our Lady of Charity of the Good
Shepherd, U.S. Provinces

Faith in New Jersey
Camden, NJ

Good Shepherd Lutheran Church
Fayetteville, AR

Wellington Avenue United Church of Christ
Chicago, IL

Church of the Savior
Cedar Park, Texas

Central Reform Congregation
St. Louis, MO

Union Congregational Church
Montclair, NJ

Friends Committee on National Legislation
Washington, DC

2a

General Synod of the United Church of Christ
Cleveland, OH

Central United Methodist Church
Detroit, MI

The Jewish Activists for Immigration Justice
of Western Massachusetts

Tikkun Olam Committee for the
Jewish Community of Amherst
Amherst, MA

Unitarian Universalist Society: East
Manchester, CT

Unitarian Universalist Service Committee
Cambridge, MA

Chicago Religious Leadership Network
on Latin America
Chicago, IL

Congregational United Church of Christ
Greensboro, NC

Spring Hill United Church of Christ
Spring Hill, FL

National Advocacy Center of the
Sisters of the Good Shepherd
Silver Spring, MD

St. John's Presbyterian Church, Berkeley
Berkeley, CA

HIAS
Silver Spring, MD

CAIR New Jersey
South Plainfield, NJ

Church World Service
New York, NY

3a

Unitarian Universalists for Social Justice
Washington, DC

St. Pius V Catholic Church
St. Louis, MO

Eliot Unitarian Universalist Chapel
Kirkwood, MI

Dane Sanctuary Coalition Steering Committee
Madison, WI

Wisconsin Faith Voices for Justice
Madison, WI

Women's Voices Raised for Social Justice
St. Louis, MO

St. Louis Inter-Faith Committee on Latin America
St. Louis, MO

Pilgrim Congregational Church
of Oak Park, UCC
Oak Park, IL

Disciples Refugee and Immigration Ministries
Washington, DC

Maryknoll Office for Global Concerns
Washington, DC

Robbinsdale Parkway United Church of Christ
Robbinsdale, MN

Universal Compassion Buddhist Congregation
Central Pacific Conference of the
United Church of Christ
Portland, OR

Southwest Conference United Church of Christ
Phoenix, AZ

Shadow Rock United Church of Christ
Phoenix, Arizona